



ROYDAN
Enterprises Ltd

602 North 9th Street

Manitowoc, WI 54220

Phone 920-684-3688

1-800-236-6906

Fax 920-684-3630

info@bldhound.com

support@
bldhound.com

www.bldhound.com

May 4, 2006

Chairman Kevin J. Martin
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: CG Docket No. 02-278

My name is Daniel R Hornung, and I am the President of ROYDAN Enterprises, Ltd. located in Wisconsin. I do not perform telemarketing services. Rather our company is a developer of automation products for the third-party debt collection industry.

The purpose of this correspondence is twofold. First, I wish to make you aware my business has been substantially harmed as a result of the Federal Communications Commission's (FCC) 2003 regulatory decision to expand the definition of autodialer beyond its statutory definition. Second, I urge you as the chair of the FCC to ask the commission to grant ACA International's (ACA) request for regulatory clarification in favor of the industry as well as all consumers who lawfully pay for goods and services they have purchased.

As you know, the Telephone Consumer Protection Act (TCPA) was passed in 1991. This law was designed to protect consumers from invasive calls from telemarketers. One of the provisions of the TCPA prohibits the use of an autodialer to communicate with a consumer by way of their cell phone.¹ Between 1991 and 2003, the FCC consistently ruled that this autodialer prohibition did not apply to calls made using an autodialer *if the sole purpose of the calls was to recover payments for goods and services already purchased*.

But in July 2003, the FCC took a dramatic shift in its position about the applicability of the autodialer prohibition to the credit and collection industry when it expanded the statutory definition of autodialer to include predictive dialers. By expanding the definition of autodialer and failing to restate the commission's prior rulings that calls made about their past due payment obligations by way of their cell phones were not subject to the autodialer prohibition, the FCC has substantially increased the scope of the regulation. Eliminating the use of our dialer technology would cause



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¹ The TCPA defines an autodialer as, "equipment which has the capacity to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers."

us to lose substantial revenue and require us to rethink our business direction. Translated, this could be very harmful to our business.

I am concerned that foreign interests may be able to use the technology with relative impunity. This would cause companies to shift operations out of the United States and into other countries, reducing employment and making other laws harder to enforce. It could be the unforeseen result of this legislation.

I am aware ACA has filed a Petition for an Expedited Ruling regarding this issue in proceeding CG Docket No. 02-278 with the commission. I fully support ACA's petition and the relief requested, including ACA's statement of the harm to business and the federal and state governments as a result of the FCC's rule. I believe that the FCC should not uphold an unsupportable and damaging regulatory interpretation that will discourage the use of predictive dialers based on a flawed understanding of the technology now espoused by the commission. To do so is contrary to the intent of Congress and all prior rulings of the FCC between 1991 and 2003 concerning this issue.

Predictive dialers offer accuracy and privacy protections. The equipment does not randomly or sequentially generate telephone numbers to arbitrarily call individuals. To the contrary, the predictive dialer hardware sold by my company does not have the capacity to randomly or sequentially generate telephone numbers. The software simply dials a list of phone numbers provided by the business. In the case of the non-telemarketing use of the dialers contemplated by ACA in its petition, the phone numbers typically are customers of the business.

In order to randomly or sequentially generate telephone numbers, a predictive dialer must be modified with separate software that is not part of the predictive dialer "equipment." This type of software-enhanced predictive dialer, in my experience, is not in use today, and certainly has no applicability to businesses that are attempting to call specific customers to discuss the status of their accounts.

In the specific context of recovering payments, predictive dialers are used by businesses to complete transactions for which consumers have obtained a benefit, without payment. They are not used – nor do they have the capacity to be used – to randomly solicit customers to make purchases or advertise goods. In fact, autodialer technology is the most accurate way to notify consumers about the status of their accounts. Autodialers increase the accuracy of dialed numbers and also restrict calls to the permitted calling times in the time zone of the consumer.

If the FCC's 2003 regulatory definition of autodialer is allowed to stand, my company and many others that rely on my products face the devastating loss of an essential technological tool. It cannot be overstated that autodialer technology is directly or indirectly responsible for returning tens of billions of dollars each year to the U.S. economy. Banning their use in this limited context would not only be inconsistent with Congress' intent, but it would be an unconscionable interference with creditors' ability to request payment from its own customers. Additionally, one of the largest creditors in the United States is the federal government. If the FCC does not clarify that the autodialer prohibition does not apply to those making calls to collect past due payment obligations, the federal government will be forced to discontinue its use of autodialers to recover past due payment obligations from tax payers. Such a result would be devastating to the federal government, including the FCC, Department of the Treasury, Department of Education and the Internal Revenue Service and cause all citizens who lawfully pay their federal taxes and other payments owed to the federal government to suffer substantial harm.

The TCPA was enacted to protect consumers from unsolicited advertisements and telemarketing calls. The TCPA's prohibition against the use of autodialers to contact consumers by way of their cell phones was specifically intended to protect consumers from incurring charges as a result of unwarranted telemarketing calls being made to their wireless phones about products or services *to be purchased in the future*. There was never any intention on the part of Congress to prohibit creditors and their retained collection agencies from being able to contact consumers on their wireless phones about *a past due payment obligation for goods and services already purchased and received*.

Moreover, wireless phone usage has grown exponentially since 1991 when the TCPA was enacted. Today, more than one out of every five Americans under the age of 35 does not have a landline phone and instead uses a wireless phone as their exclusive means of telephonic communication. If allowed to stand, the long-term consequences of the FCC's decision are foreboding at best.

As it stands today, my business, along with thousands of others, face serious financial hardship due to the FCC's regulatory reversal. The FCC's rule needlessly subjects us to federal enforcement and private litigation, even though Congress never intended such an outcome.

For these reasons, the FCC should promptly clarify that autodialer calls to wireless numbers solely to recover payment obligations are not covered by the TCPA regulations for the reasons expressed by ACA.

Sincerely,

Daniel R Hornung
President
ROYDAN Enterprises, Ltd.

cc: ACA International